



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2005

Mr. Marc Allen Connelly  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756

OR2005-05154

Dear Mr. Connelly:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225915.

The Texas Department of State Health Services (the "department") received a request for "any and all documents relating" to an investigation and evaluation of possible medical limitation to a named individual's driving privileges. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 12.097 of the Health and Safety Code. Section 12.097 provides as follows:

(a) All records, reports, and testimony relating to the medical condition of an applicant or license holder:

(1) are for the confidential use of the medical advisory board [of the department], a panel, or the Department of Public Safety of the State of Texas;

(2) are privileged information; and

(3) may not be disclosed to any person or used as evidence in a trial except as provided by Subsection (b).

(b) In a subsequent proceeding under Subchapter N, Chapter 521, Transportation Code,<sup>1</sup> the medical standards division [of the department] may provide a copy of the report of the medical advisory board or panel and a medical record or report relating to an applicant or license holder to:

(1) the Department of Public Safety of the State of Texas;

(2) the applicant or license holder; and

(3) the officer who presides at the hearing.

Health & Safety Code § 12.097 (footnote in original); *see also id.* §§ 12.092(b) (providing for appointment of medical advisory board to assist department in determining whether driver's license applicant or license holder is capable of safely operating motor vehicle), 12.095 (providing for medical advisory board opinion or recommendation to department). You indicate that the submitted information is maintained by the medical advisory board. You inform us that no hearing has been scheduled in the matter to which this information relates. Based on your representations and our review of the information in question, we conclude that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 12.097(a) of the Health and Safety Code.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

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<sup>1</sup> V.T.C.A., Transportation Code § 521.291 *et seq.*

<sup>2</sup> We note that the license holder may be able to obtain information to which the requestor seeks access in a subsequent proceeding under subchapter N of chapter 521 of the Transportation Code. *See* Health & Safety Code § 12.097(b).

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

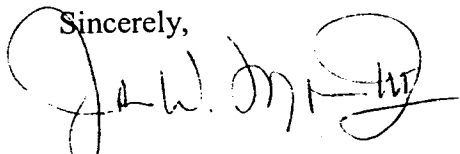
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", written over a horizontal line.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 225915

Enc: Submitted documents

c: Mr. John C. Wray  
Attorney at Law  
200A North Rogers Street  
Waxahachie, Texas 75165  
(w/o enclosures)